

ESTTA Tracking number: **ESTTA873767**

Filing date: **01/29/2018**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	American Beverage Corporation
Granted to Date of previous extension	01/31/2018
Address	1 Daily Way Verona, PA 15147 UNITED STATES
Attorney information	Dawn Rudenko Holland & Knight LLP 263 Tresser Boulevard One Stamford Plaza, Suite 1400 Stamford, CT 06901 UNITED STATES Email: dawn.rudenko@hklaw.com, ptdocketing@hklaw.com, joanna.crosby@hklaw.com Phone: 2039054520

### Applicant Information

Application No	87458530	Publication date	10/03/2017
Opposition Filing Date	01/29/2018	Opposition Period Ends	01/31/2018
Applicant	Boston Beer Corporation 1 Design Center Pl. Ste. 850 Boston, MA 02210 UNITED STATES		

### Goods/Services Affected by Opposition


Class 032. First Use: 0 First Use In Commerce: 0  
All goods and services in the class are opposed, namely: Beer

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	5302923	Application Date	08/01/2016
Registration Date	10/03/2017	Foreign Priority Date	NONE
Word Mark	DARTY		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 033. First use: First Use: 2017/05/26 First Use In Commerce: 2017/05/26 Ready to drink alcoholic cocktails

Attachments	87123570#TMSN.png( bytes ) Notice of Opposition 87458530.pdf(146546 bytes ) Exh A.pdf(51435 bytes ) Exh B.pdf(23729 bytes ) Exh C.pdf(30433 bytes ) Exh D.pdf(41613 bytes )
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Signature	/Dawn Rudenko/
Name	Dawn Rudenko
Date	01/29/2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
AMERICAN BEVERAGE CORP.,	)	
Opposer,	)	Opposition No. _____
	)	Application Serial No. 87/458530
v.	)	Mark: DAY PARTY
	)	
BOSTON BEER CORP.,	)	<b>NOTICE OF OPPOSITION</b>
Applicant.	)	
_____	)	

TO THE COMMISSIONER FOR TRADEMARKS:

American Beverage Corporation, a Delaware corporation with its principal place of business at 1 Daily Way Verona , Pennsylvania 15147 (“Opposer”), believes it will be damaged by registration of the mark shown in Application Serial No. 87/458530 filed May 22, 2017 (“Application”) by Boston Beer Corporation, a Massachusetts corporation, with its address of record 1 Design Center Place, Suite 850 (“Applicant”). Applicant’s application was published for opposition in the Official Gazette on October 3, 2017, and having been previously granted an extension of time to oppose on October 26, 2017 and November 28, 2017, Opposer hereby opposes the same.

As grounds for opposition, Opposer, by its attorneys Holland & Knight LLP, alleges as follows:

**OPPOSER’S MARKS**

1. Opposer is the owner of U.S. Registration No. 5,302,923 for DARTY (Opposer Mark, Exh. A). This registration is valid and subsisting, and in full force and effect. Opposer

filed the application for DARTY on August 1, 2016 under 15 U.S.C. § 1051(b). Opposer has been using the DARTY mark in commerce in the United States since May 26, 2017.

2. The goods associated with Opposer's Mark are "Ready to drink alcoholic cocktails" in International Class 33 ("Opposer's Goods").

3. Opposer's Mark is prima facie evidence of the validity of, and Opposer's exclusive right to use, the DARTY mark and serves as constructive notice of Opposer's ownership.

### **APPLICANT'S MARK**

4. On May 22, 2017, Applicant filed an application for the mark DAY PARTY ("Applicant's Mark") under Serial No. 87/458530 ("Application"). The Application was published on October 3, 2017.

5. Following the publication of Applicant's Mark, Opposer sought and obtained extensions of time from the United States Patent and Trademark Office to, and including, January 31, 2018, in which to file a Notice of Opposition.

6. The Application is in International Class 32 for "beer" ("Applicant's Goods").

7. The Application is based on Applicant's intention to use the mark under 15 U.S.C. § 1051(b). *See* Exh. B, TSDR Summary.

8. Upon information and belief, prior to the filing date of the Application, namely, May 22, 2017, Applicant made no use of Applicant's Mark on or in connection with Applicant's Goods in commerce.

### **LIKELIHOOD OF CONFUSION**

9. Opposer repeats and realleges paragraphs 1-8 above.

10. Opposer has continuously and regularly used the DARTY mark in commerce

since at least as early as May 26, 2017 in connection with Opposer's Goods, and Opposer's Mark is currently in use in commerce on Opposer's Goods.

11. Priority is not at issue in this case because both Opposer's filing date (August 1, 2016) and Opposer's first use date (May 26, 2017) precede Applicant's filing date (May 22, 2017). Applicant has not provided a first use date, and to Opposer's knowledge and belief, has not begun using the DAY PARTY mark in commerce as of this Notice.

12. Therefore, Opposer has rights in its DARTY mark that are prior and superior to any rights that Applicant may have in its DAY PARTY mark.

13. Applicant's Mark is similar to Opposer's Mark in sight, sound and commercial impression.

14. The colloquial meaning of DARTY is "Day Party." (*See* Exhs. C-D.)

15. Given the similarity between the parties marks, visually, commercially and in meaning, Applicant's registration and use of the DAY PARTY mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of Opposer's Goods associated with its DARTY mark.

16. Applicant's Goods are closely related to or in the natural zone of expansion of Opposer's Goods.

17. Applicant's Goods and Opposer's Goods will travel in the same channels of trade, including big-box retailers, and target the same customers, including those who buy alcoholic beverages, including ready to drink alcoholic cocktail mixes and beer.

18. Purchasers familiar with Opposer's Goods are likely to mistakenly believe that Applicant's Goods are sponsored by, authorized, endorsed, affiliated with or otherwise approved by Opposer because of the similarities between the parties' marks and goods.

19. Applicant's Mark is likely, when applied to Applicant's Goods, to cause confusion, mistake, and deceive with consequent injury to Opposer and the public.

20. For the foregoing reasons, the registration sought by Applicant is contrary to the provisions of Section 2 of the Lanham Act, and Opposer believes that it would be damaged thereby.

WHEREFORE, Opposer respectfully requests that the registration of the mark shown in Application Ser. No. 87/458530 be refused and that this Opposition be sustained in favor of Opposer.

Respectfully submitted,

Dated: January 29, 2018

AMERICAN BEVERAGE CORPORATION

By: *Dawn Rudenko*

Dawn Rudenko  
HOLLAND & KNIGHT LLP  
One Stamford Plaza  
263 Tresser Boulevard, Suite 1400  
Stamford, CT 06901

*Attorneys for Opposer*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Opposition was served upon the following attorney for Applicant by mailing via first class mail, United States Postal Service, postage prepaid, on January 29, 2018: Mr. Michael G. Andrews, Boston Beer Corporation, 1 Design Center Place, Suite 850, Boston, MA 02210.

/Dawn Rudenko/

Dawn Rudenko  
HOLLAND & KNIGHT LLP  
One Stamford Plaza  
263 Tresser Boulevard, Suite 1400  
Stamford, CT 06901

# United States of America

United States Patent and Trademark Office

## DARTY

**Reg. No. 5,302,923**

**Registered Oct. 03, 2017**

**Int. Cl.: 33**

**Trademark**

**Principal Register**

American Beverage Corporation (DELAWARE CORPORATION)

1 Daily Way

Verona, PENNSYLVANIA 15147

CLASS 33: Ready to drink alcoholic cocktails

FIRST USE 5-26-2017; IN COMMERCE 5-26-2017

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-123,570, FILED 08-01-2016



*Joseph Matol*

Performing the Functions and Duties of the  
Under Secretary of Commerce for  
Intellectual Property and Director of the  
United States Patent and Trademark Office



## **REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

### **Requirements in the First Ten Years\***

#### **What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

### **Requirements in Successive Ten-Year Periods\***

#### **What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

### **Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

**Generated on:** This page was generated by TSDR on 2018-01-29 09:11:20 EST

**Mark:** DAY PARTY

DAY PARTY

**US Serial Number:** 87458530

**Application Filing Date:** May 22, 2017

**Filed as TEAS Plus:** Yes

**Currently TEAS Plus:** Yes

**Register:** Principal

**Mark Type:** Trademark

**Status:** A request for an extension of time to file an opposition has been filed with the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

**Status Date:** Oct. 26, 2017

**Publication Date:** Oct. 03, 2017

## Mark Information

**Mark Literal Elements:** DAY PARTY

**Standard Character Claim:** Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

**Mark Drawing Type:** 4 - STANDARD CHARACTER MARK

## Goods and Services

**Note:** The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks \*..\* identify additional (new) wording in the goods/services.

**For:** Beer

**International Class(es):** 032 - Primary Class

**U.S Class(es):** 045, 046, 048

**Class Status:** ACTIVE

**Basis:** 1(b)

## Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** Yes

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** Boston Beer Corporation

**Owner Address:** 1 Design Center Pl. Ste. 850  
Boston, MASSACHUSETTS 02210  
UNITED STATES

**Legal Entity Type:** CORPORATION

**State or Country Where Organized:** MASSACHUSETTS

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Michael G. Andrews

**Attorney Primary Email Address:** [Mike.Andrews@bostonbeer.com](mailto:Mike.Andrews@bostonbeer.com)

**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** MICHAEL G. ANDREWS  
BOSTON BEER CORPORATION  
1 DESIGN CENTER PL., STE. 850  
BOSTON, MASSACHUSETTS 02210  
UNITED STATES

**Correspondent e-mail:** [Helen.Bornemann@bostonbeer.com](mailto:Helen.Bornemann@bostonbeer.com) [Mike.Andrews@bostonbeer.com](mailto:Mike.Andrews@bostonbeer.com)

**Correspondent e-mail Authorized:** Yes

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Oct. 26, 2017	EXTENSION OF TIME TO OPPOSE RECEIVED	
Oct. 03, 2017	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Oct. 03, 2017	PUBLISHED FOR OPPOSITION	
Sep. 13, 2017	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Aug. 22, 2017	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 22, 2017	ASSIGNED TO EXAMINER	76144
May 26, 2017	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
May 25, 2017	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

**TM Attorney:** WATSON, JULIE A

**Law Office Assigned:** LAW OFFICE 109

### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Aug. 25, 2017

## Proceedings

### Summary

**Number of Proceedings:** 1

### Type of Proceeding: Extension of Time

**Proceeding Number:** [87458530](#)

**Filing Date:** Oct 26, 2017

**Status:** Not Instituted

**Status Date:** Oct 26, 2017

**Interlocutory Attorney:**

### Defendant

**Name:** Boston Beer Corporation

**Correspondent Address:** MICHAEL G. ANDREWS  
BOSTON BEER CORPORATION  
1 DESIGN CENTER PL., STE. 850  
BOSTON MA , 02210

**Correspondent e-mail:** [Helen.Bornemann@bostonbeer.com](mailto:Helen.Bornemann@bostonbeer.com) , [Mike.Andrews@bostonbeer.com](mailto:Mike.Andrews@bostonbeer.com)

### Associated marks

Mark	Application Status	Serial Number	Registration Number
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**Potential Opposer(s)****Name:** American Beverage Corporation**Correspondent** Dawn Rudenko**Address:** Holland & Knight LLP

263 Tresser BoulevardOne Stamford Plaza, Suite 1400

Stamford CT , 06901

UNITED STATES

**Correspondent e-mail:** [dawn.rudenko@hklaw.com](mailto:dawn.rudenko@hklaw.com) , [ptdocketing@hklaw.com](mailto:ptdocketing@hklaw.com) , [joanna.crosby@hklaw.com](mailto:joanna.crosby@hklaw.com)**Prosecution History**

Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Oct 26, 2017	
2	EXTENSION OF TIME GRANTED	Oct 26, 2017	
3	INCOMING - EXT TIME TO OPPOSE FILED	Nov 28, 2017	
4	EXTENSION OF TIME GRANTED	Nov 28, 2017	

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A **darty** is much more of an experience than just a regular **definition** of what it is. But, to clarify, here's how you would describe it: **Darty** - a drunken party while the sun is out, otherwise known as a day party. Jun 9, 2015

What Is A "Darty?" - Odyssey

<https://www.theodysseyonline.com/what-darty>

**darty**

[www.youtube.com](http://www.youtube.com)



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Feedback

## Darty

A day [party](#), usually outdoors, characterized by drinking tanks and lax pennies, females in high-waisted shorts and/or bikinis, and large amounts of beer. Sometimes includes a slip-n-slide. Often held at [frat](#) houses or other outdoor partying venues on a [college](#) campus.

Darty season is all the Saturday afternoons from the beginning of fall semester through early October, or however [long](#) days stay warm and sunny in a given region.